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REMARKS

Claims 1 to 8 and 11 to 13 are pending in the application.

Claims 9 and 10 do not exist, as the original claim set was inadvertently numbered incorrectly.

Claim 1 is cancelled herein.

Claims 2 to 8 and 12 are currently amended.

Claims 11 and 13 are original.

Claims 2 to 8 and Claims 11 to 13 would be all of the claims remaining in the application if the amendments are entered.

Discussion of Amendments

The amendment to Claim 2 is supported by the specification, including page 21, at lines 5 to 7; Scheme 1 on page 50; and original Claims 1, 2, and 7. Claim 2 is also amended to recite the definitions of the substituent groups that were previously incorporated by reference from Claim 1, as Claim 1 is cancelled.

The dependencies of Claims 3 to 6, 8, and 12 are amended because Claim 1 is cancelled.

Claim 6 is further amended to delete substituent groups that no longer have antecedent basis, as Claim 2 is amended.

Claim 7 is amended to delete species that are not part of the elected invention.

Applicants reserve their right to reintroduce claims embracing deleted or cancelled subject matter in this application or any continuations, divisionals, or continuations-in-part thereof.

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Claim Rejections - 35 U.S.C. § 112

In item 3 of the Office Action, Claim 2 is rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner alleged that substituent "R" in formulas 2, 4, 6, 7, 8, 9, 123 has no antecedent basis in base Claim 1, wherein "R¹⁰" is the substituent described in the definitions of groups X and Y. The Examiner further recommended that the term "suitable" be deleted from the phrase "suitable substituents" in Claim 1, as allegedly the criteria for suitability have not been described in the specification.

Applicants note that Claim 2 has been amended to delete the term "suitable" and, further, to claim a compound that does not contain a group "R" bonded to the bicycle of the general formula. Accordingly, Applicants believe that Claim 2 is definite and patentable under 35 U.S.C. § 112, second paragraph.

Claim Rejections - 35 U.S.C. §102

In items 4 to 8 of the Office Action, Claims 1 and 6 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by 5. Harris, et al., 6. Galera, et al., 7. Diaz, et al., or 8. Kim, et al., respectively.

Applicants traverse this rejection on the basis that Claim 1 is cancelled, rendering the rejection of Claim 1 moot, and that the compound of Claim 6 is not described in the cited references.

Harris et al., Galera et al., Diaz et al., and Kim et al. describe bromide or chloride salts of thiazolopyridinium organic cations, wherein a positive charge resides in the thiazolopyridinium ring.

The compound of Claim 6 is a thiadiazolopyridine. Further, no positive charge resides in the thiadiazolopyridine ring. Accordingly, Applicants believe that the reference

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compounds do not anticipate Claim 6, and thus Claim 6 is patentable under 35 U.S.C. § 102(b) in view of Harris et al., Galera et al., Diaz et al., and Kim et al.

In item 9 of the Office Action, Claims 1 to 6 are rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Bunker et al., U.S. 2003/0144274. The Examiner alleged that the species compounds of Claim 17 that are described on pages 49 and 50 of Bunker et al. anticipate instant Claims 1 to 6.

Applicants traverse the rejection on the basis that Claim 1 is canceled, rendering the rejection of Claim 1 moot, and that Claims 2 to 6 are not anticipated by the compounds of Bunker et al.

Bunker et al. in Claim 17 describe thiazolo[3,2-a]pyridine compounds, whereas the compounds of Claims 2 to 6 are [1,3,4]thiadiazolo[3,2-a]pyridine compounds. Accordingly, Applicants believe that the compounds of Claim 17 of Bunker et al. do not anticipate Claims 2 to 6, and thus Claims 2 to 6 are patentable under 35 U.S.C. § 102(e) in view of Bunker et al.

Double Patenting

In item 10 of the Office Action, Claims 1 to 6 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over Claims 15 to 17 of co-pending application no. 10/264,764. The Examiner alleged that the conflicting claims are not patentably distinct from each other because the compounds of Claims 15 to 17 of co-pending application no. 10/264,764 are encompassed by the instant Claims 1 to 6.

Applicants traverse the rejection on the basis that Claim 1 is canceled, rendering the rejection of Claim 1 moot, and that Claims 2 to 6 do not encompass the referenced compounds of the co-pending application.

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Claims 15 to 17 of the copending application 10/264,764 (published as Bunker et al., U.S. 2003/0144274) claim alkyne-substituted thiazolo[3,2-a]pyridine compounds, whereas the compounds of Claims 2 to 6 are amide-substituted [1,3,4]thiadiazolo[3,2-a]pyridine compounds. Applicants believe that Claims 2 to 6 do not encompass the compounds of Claims 15 to 17 of 10/264,764, and that the amide-substituted [1,3,4]thiadiazolo[3,2-a]pyridine compounds of Claims 2 to 6 are patentably distinct over the alkyne-substituted thiazolo[3,2-a]pyridine compounds of 10/264,764. Accordingly, Applicants believe that Claims 2 to 6 are patentable under the judicially created doctrine of obviousness-type double patenting in view of 10/264,764.

Claim Objections

Claims 1 to 7 are objected to because they contain non-elected subject matter.

Applicants note that Claim 1 is canceled, rendering the objection to Claim 1 moot, and that Claims 2 to 7 have been amended to delete non-elected subject matter.

Conclusion

In view of the above amendment and remarks, Applicants believe that the rejections and objection are overcome. Applicants request removal of the rejections and objection and reconsideration and allowance of Claims 2 to 8 and 11 to 13.

The undersigned can be contacted at the below-recited telephone number.

Respectfully submitted,

Date: As of September 27, 2004

Claude F. Purchase

Claude F. Purchase, Jr.
Reg. No. 47,871
Pfizer Inc.
2800 Plymouth Road
Ann Arbor, MI 48105
Tel. (734) 622-1692
Fax (734) 622-1553